

IN THE MATTER OF LEONARD SIDNEY MOSS, solicitor

- and -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr A H Isaacs (in the chair)  
Mr L N Gilford  
Mr G Fisher

Date of Hearing: 4th April 2006

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## **FINDINGS**

of the Solicitors Disciplinary Tribunal  
Constituted under the Solicitors Act 1974

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An application was duly made on behalf of The Law Society by Robert Simon Roscoe, solicitor and partner in the firm of Victor Lissack, Roscoe & Coleman, solicitors of 70 Marylebone Lane, London W1U 2PQ on 25<sup>th</sup> April 2005 that Leonard Sydney Moss of East Grinstead, West Sussex solicitor might be required to answer the allegations contained in the statement which accompanied the application and that such order might be made as the Tribunal thought right.

The allegations were that the Respondent had been guilty of conduct unbecoming a solicitor in each of the following particulars namely:-

- (a) That he has failed to act with integrity in his representation of his client Mrs M,
- (b) That he has failed to act in the best interests of his client, Mrs M.
- (c) That he took unfair advantage of his client Mrs M by imposing an improper cost settlement that he knew or ought to have known was substantially more than he was entitled to.

- (d) That he attempted to mislead the Legal Aid Board by informing them that the breach of Regulation 64 of the Civil Legal Aid (General) Regulations 1989 had occurred at the request of his client, Mrs M, knowing that this was not true.
- (e) That in suggesting and/or negotiating an improper cost settlement on Mrs M he knowingly acted in breach of Regulation 64 of the Civil Legal Aid (General) Regulations 1989 and by such conduct he has compromised or impaired his good repute or that of the solicitors' profession.
- (f) That in his conduct arising out of his representation of Mrs M and his negotiations with her in respect of her legal costs he acted dishonestly.

The evidence before the Tribunal included an affidavit of Mrs M and copies of documents which had been served on the Respondent to which he had raised no objection.

The Tribunal had been notified by David Barton, solicitor advocate of Maidstone, Kent, that he represented Mr Moss. Mr Barton had written a letter to the Tribunal dated 27<sup>th</sup> March 2005.

Mr Barton explained that the Respondent had been away from his office for a number of weeks owing to illness. His illness began early in February 2006 and Mr Moss was awaiting a formal diagnosis of his condition. Mr Moss would be too unwell to attend the disciplinary hearing. If the hearing did take place on 4<sup>th</sup> April as scheduled it would do so in the absence of the Respondent.

Mr Barton had obtained an expert costs draftsman's report, a copy of which had been served on the Applicant but the Applicant was not able to accept the report as relevant evidence of matters before the Tribunal. Mr Moss freely admitted that he had made an error of judgement but he emphatically denied that he had been dishonest. He accepted that he had acted in breach of Regulation 64 of the Civil Legal Aid (General) Regulations 1989 but denied doing so knowingly and deliberately. The Respondent denied the allegations save for allegation 2 (b) which he admitted.

Mr Barton had informed the Tribunal that the Respondent had instructed him in clear terms that he did not wish to apply for an adjournment of the substantive hearing which neither he nor Mr Barton would be attending. The Respondent indicated that he was having a nervous breakdown at least in part because of the disciplinary proceedings. His ability to cope with anything was limited. The Respondent wanted the proceedings to be finished at the earliest opportunity.

The Applicant had made it clear that he did not accept the report of the expert costs draftsman instructed on behalf of the Respondent. He did however accept that it provided an indication that Mr Moss might have been able to justify a higher level of charging than he had initially asserted. The Applicant still put this part of his case, however, as one of overcharging by the Respondent.

**At the conclusion of the hearing the Tribunal made the following Order:-**

The Tribunal Orders that the respondent, Leonard Sidney Moss of East Grinstead, West Sussex, solicitor, be Struck Off the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £4,729.30

**The facts are set out in paragraphs 1 to 13 hereunder**

1. The Respondent, born in 1938, was admitted as a solicitor in 1964. His name remained on The Roll of Solicitors. At the material time the Respondent practised as a sole practitioner under the style of Leonard Moss & Co, solicitors at East Grinstead, West Sussex.
2. In July 1996 Mrs M instructed the Respondent to act for her in matrimonial and ancillary relief proceedings. Initially £400 was paid to the Respondent on account of costs but in October 1996 Mrs M was granted Legal Aid.
3. A court order was made in respect of the sale of Mrs M's former matrimonial home. The Respondent acted in the sale and in the purchase of a new home.
4. The Respondent had notified Mrs M about the extent of her Legal Aid Certificate and the effect of the Legal Aid statutory charge. As a solicitor holding a Legal Aid Certificate he was obliged to inform his client of the relevant provisions and to be familiar himself with the Civil Legal Aid (General) Regulations 1989.
5. Regulation 64 of the Civil Legal Aid (General) Regulations 1989 ["the Regulations"] states, "*Where a certificate has been issued in connection with any proceedings, the assisted person's solicitor or counsel shall not receive or be a party to the making of any payment for work done in those proceedings during the currency of that certificate (whether within the scope of the certificate or otherwise) except such payments as may be made out of the fund.*"
6. The Respondent provided to Mrs M a letter from her addressed to his firm dated 5<sup>th</sup> March 1999 in the following terms;

"I acknowledge the advices you have given me in relation to my instructions in connection with the above to your firm throughout the period June 1996 – March 1999. In the light of the settlement you have achieved on my behalf in regard to these matters, I wish to agree your fees at £20,000 plus VAT of £3500 plus disbursements of £26.00. I particularly do not require to have detailed narrative accounts of all the above and which in total exceed some 250 hours spent on my case. I therefore, hereby irrevocably authorize you to deduct the total agreed fees above from the settlement monies due to me.

In particular I instruct you to account to me forthwith for funds you are holding without reference to the Legal Aid Board/taxation of costs which I appreciate will otherwise delay the release of the monies to me.

I also acknowledge that there is some further work to be done before the whole matter is finalized e.g. the Footpath Diversion Order and other incidental matters and thus there will be further fees due to your firm from today's date until the matter has been concluded in all respects. Nevertheless my instructions to you are irrevocable insofar as my Legal Aid Certificate is concerned which has been discharged and for which I shall not require you under any circumstances whatsoever to require you to have taxation of your costs as now agreed whether through the Court or otherwise. In this respect you have advised me that I am entitled to take separate independent legal advice, but I do not wish to do this and you are therefore irrevocably authorized and instructed to complete my settlement and account to me forthwith without involvement and/or reference to the Legal Aid Board.

It is specifically on the basis of the above terms as agreed that you and your firm now release funds to me and I acknowledge and confirm that subject as above this now concludes matters in all respects between us.

I appreciate that in making this agreement with you, you are making a concession to me on the actual costs incurred, which if charged on a time basis or by taxation through the Court may well result in an increase in fees. It is to avoid that that I accept the concession offered and make this agreement.

Yours faithfully  
Ruth M'.

Mrs M agreed that she signed that letter.

7. In her affidavit Mrs M explained that the Respondent had in March 1999 suggested to her that it would be less expensive for her if she paid his legal costs for the matrimonial work privately instead of relying on Legal Aid and running the risk of the Statutory Charge being attached to her new home by the (then) Legal Aid Board.
8. Mrs M queried that "agreement" in letters to the Respondent and a correspondence developed between her and the Respondent which was before the Tribunal. Mrs M sought advice from an independent solicitor and was prompted to remind the Respondent of Regulations 64 and 90 of the Regulations. She attempted to resolve the difficulty she felt she was having with the Respondent and the correspondence referred to proposals for fees, which would have been in breach of Regulation 64, together with requests for a legal aid taxation, and a remuneration certificate. Mrs M also indicated that she would report the Respondent to The Law Society.
9. In his letter of 22<sup>nd</sup> June 1999, the Respondent again attempted to persuade Mrs M to resolve the costs dispute without recourse to taxation or a remuneration certificate. He provided to Mrs M a 'draft settlement letter', upon which he invited her to take the advice of an independent solicitor. The draft settlement letter, which was to be from Mrs M to the Respondent, purported to settle the dispute without Mrs M requiring taxation or a remuneration certificate and requested that no Legal Aid claim was made. It was proposed that Mrs M would say, '*I also confirm irrevocably that I do not and will not now and for the future require any formal billing of costs in respect of the above matters*'. A further document had been drafted by the Respondent for an

independent solicitor to sign. The independent solicitors had signed, but first had amended the document to indicate that they had advised that the agreement set out in Mrs M's proposed letter would have to remain "subject to approval of the Legal Aid Board."

10. On 14<sup>th</sup> February 2000 the Legal Aid Board wrote to the Respondent advising him that Mrs M had been in contact about the Respondent's delay. The Respondent was asked to contact the Legal Aid Board. He did so by letter of 21<sup>st</sup> February 2000 in which he informed the Legal Aid Board that, "*our client required us to account to her immediately and direct for all the net equity monies .....It was specifically at our client's request that she would deal with the fees privately herself so as to avoid the usual taxation procedures .....Accordingly, our client signed an agreement to this effect (which was effected by our client under independent advice).*"
11. The Legal Aid Board wrote to the Respondent on 16<sup>th</sup> March 2000, again referring him to Regulation 64.
12. Taxation took place following the lodgement of the Respondent's bill in September 2000. The figure allowed was £3729.53 plus £652.67.
13. A costs draftsman instructed by the Respondent in the disciplinary proceedings considered that the work undertaken by the Respondent for Mrs M in connection with her matrimonial affairs could properly have supported a charge of rather more than the figure allowed on taxation. The conveyancing fees were properly charged in addition.

#### **The submissions of the Applicant**

14. The Applicant did put the allegations as matters of dishonesty. The Tribunal was invited to find that the test in the case of *Twinsectra-v-Yardley and others* [2002] UKHL12 had been satisfied. The letter drafted by the Respondent for Mrs M to sign dated 5<sup>th</sup> March 1999 specifically stated that she instructed him to account to her for funds he was holding without reference to the Legal Aid Board or taxation of costs. The letter was also drafted in such a way as to make Mrs M's instruction irrevocable and purported to deny Mrs M any reconsideration of her instructions.
15. The Respondent clearly had acted in breach of Regulation 64 of the Regulations, any Legal Aid Practitioner could not have been unaware of that Regulation.
16. The letter written by the Respondent to the Legal Aid Board dated 21<sup>st</sup> February 2000 did not accurately reflect what had occurred. It was inaccurate with regard to the correspondence passing between Mrs M and the Respondent and was inaccurate with regard to the circumstances in which Mrs M signed the 5<sup>th</sup> March 1999 letter which had been prepared by the Respondent. He said that Mrs M had signed that letter "under independent advice" whereas the 5<sup>th</sup> March 1999 letter of agreement drafted by the Respondent stated "you have advised me that I am entitled to take separate independent legal advice but I do not wish to do this." The Respondent made no reference to the breach of Regulation 64 of the Regulations despite the fact that he had been reminded that he had been in breach in a letter written by Mrs M dated 4<sup>th</sup> May 1999.

17. It appeared that Mrs M had taken advice as the content of a number of her letters was fairly technical and expressed a clear understanding of the correct procedures.
18. The references to the irrevocability of the agreement amounted to an attempt on the part of the Respondent to bind Mrs M to what he knew was a breach of the Legal Aid Regulations. Mrs M was being encouraged to sign the letter by a representation that to do so would be in her best interests. Manifestly it was not and the Tribunal was invited to find that the Respondent had acted dishonestly.
19. The Respondent's letter addressed to the Legal Aid Board dated 21<sup>st</sup> February 2000 amounted to an attempt by the Respondent to circumvent Regulations to secure advantage for himself at the expense of his client. He claimed disingenuously that he was acting at the request of the client when in fact he had requested the client to enter the agreement set out in the letter of 5<sup>th</sup> March 1999.
20. Following the taxation of the Respondent's costs it was clear that the Respondent had sought to charge Mrs M on a different basis from that relating to a legally aided client and that basis was more favourable to him although he told Mrs M that he was calculating his charges on a concessionary basis.
21. The Respondent himself had indicated that he was experienced and there was no suggestion that he was not fully aware of the relevant Legal Aid Regulations.

#### **The submissions of the Respondent**

22. The Respondent had been in practice since 1964 and enjoyed an unblemished professional history. All monies charged to Mrs M had been paid back to her and indeed she had not paid any costs at all. The Respondent had not claimed his fees for any of the work he conducted on Mrs M's behalf.
23. The Respondent's client and office accounts had been operated impeccably.
24. The Respondent freely admitted an error of judgement on his part but he emphatically denied that he had been dishonest.
25. The Respondent was not in financial need and had no motive to act dishonestly. He proceeded as he did in error. He accepted that the error was serious but it was not dishonest.
26. Throughout all his dealings with Mrs M the Respondent endeavoured to only act in her best interests although he accepted that in fact he had failed to do so.
27. The Respondent denied taking an unfair advantage, believing that the costs he proposed to bill fairly represented the work he had undertaken.
28. The Respondent accepted that he had acted in breach of Regulation 64 of the Regulations but he did not do so knowingly. The Respondent had been motivated by Mrs M's desire to receive prompt payment for her settlement. The Respondent had not

been aware of the absolute prohibition against proceeding as he did. The Respondent did admit the breach of the Regulations but he denied doing so knowingly and deliberately.

29. The Respondent did admit allegation (b).

### **The Tribunal's Findings**

30. The Tribunal found all of the allegations to have been substantiated and was in no doubt that the Respondent's behaviour had been dishonest.

### **The Tribunal's decision and its reasons**

31. It is a fundamental principle that a client cannot be required personally to meet a solicitor's costs where the work undertaken for that client is covered by a Legal Aid Certificate. Regulation 64 of the Regulations deals specifically with such a situation. An experienced practitioner could not be unaware of Regulation 64 and an attempt to operate outside that Regulation could only impair the good reputation of the solicitors' profession and that of the Respondent himself.
32. Mrs M was offered no explanation that the agreement that she was invited to enter was a breach of the Regulations. The Respondent took unfair advantage of Mrs M in persuading her to enter such an agreement. The costs allowed on taxation were considerably lower than to which those Mrs M had been persuaded to agree. The Respondent had failed to act with integrity in respect of his representations to Mrs M and clearly he had failed to act in her best interests.
33. The Tribunal noted the Applicant's submission that the letter written by the Respondent to the Legal Aid Board dated 21<sup>st</sup> February 2000 was at best disingenuous, but The Tribunal found that it was not accurate and contained statements which the Respondent must have known were misleading. The Respondent was, in relation to the conduct of Mrs M's affairs dishonest. In reaching that conclusion the Tribunal was guided by the test in *Twinsectra-v-Yardley*. In the light of Regulation 64 ordinary honest members of the solicitors' profession, and indeed members of the public, would consider that the Respondent's actions in the matter of Mrs M were dishonest. It was inconceivable that a solicitor with the Respondent's experience could not himself be aware that his actions would be regarded by his fellow solicitors and members of the public as dishonest.
34. The Respondent's conduct fell far short of his professional duty to act with the utmost integrity, probity and trustworthiness and in consequence the Tribunal ordered that the Respondent be struck off The Roll of Solicitors.
35. The Applicant indicated to the Tribunal that he sought his costs. He had indicated to the Respondent that his costs amounted to £4,729.30. The Respondent had indicated that he would be prepared to pay costs in the sum of £2,500. This was not acceptable to the Applicant who invited the Tribunal to consider making a summary order for fixed costs in the sum sought or that his costs be subject to a detailed assessment.

36. The Tribunal considered that it was right that the Respondent should meet the costs of the Applicant instructed by The Law Society. It considered that the costs sought by the Applicant were entirely reasonable. In order to save time and further expense the Tribunal ordered the Respondent to pay costs in the fixed sum sought by the Applicant.

Dated this 15<sup>th</sup> day of May 2006  
On behalf of the Tribunal

A H Isaacs  
Chairman